

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NATHAN McCUE,)	
)	
Plaintiffs,)	Case No. 20-cv-7318
)	
vs.)	JURY TRIAL DEMANDED
)	
OFFICER JEFFREY JOHNSON,)	Hon. Judge Nancy L. Maldonado
CITY OF YORKVILLE, KENDALL COUNTY,)	
UNKNOWN OFFICERS, and)	
UNKNOWN PARAMEDICS,)	
)	
Defendants.)	

**DEFENDANT CITY OF YORKVILLE AND OFFICER JEFFREY JOHNSON’S
MOTION TO DISMISS COUNTS III AND IV OF PLAINTIFF’S FIRST AMENDED
COMPLAINT AND TO DISMISS UNKNOWN OFFICERS**

NOW COME the Defendants, JEFFREY JOHNSON and CITY OF YORKVILLE, by their attorneys, MICHAEL D. BERSANI and ANDREA M. NIKOLAI of HERVAS, CONDON & BERSANI, P.C., and pursuant to Federal Rules of Civil Procedure 12(b)(6), 4(m), and 41(b), move to dismiss Counts III and IV of Plaintiff’s First Amended Complaint and to dismiss sued “unknown officers.” In support of this motion, Defendants state as follows:

1. Plaintiff filed a First Amended Complaint pursuant to 42 U.S.C. § 1983, alleging excessive force and unlawful detention (Counts I and II) in violation of federal constitutional rights against Defendant Officer Jeffrey Johnson and “unknown officers” who have not been subsequently named or served. Plaintiff also alleges supplemental *respondeat superior* claims under Illinois law against the Defendant City of Yorkville for civil battery and false detention/arrest (Counts III and IV), and a claim for statutory indemnification (Count V).

2. Defendants Officer Johnson and Yorkville have answered Counts I, II, and V. However, Counts III and IV should be dismissed with prejudice as barred by the statute of limitations and statutory immunity.

3. Plaintiffs' claims stem from alleged events that occurred on December 10, 2018. Plaintiff filed his original *pro se* complaint on December 10, 2020. The applicable statute of limitation is one year pursuant to the Illinois Local Governmental and Governmental Tort Immunity Act, 745 ILCS 10/8-101 ("TIA"). Therefore, Counts III and IV are time barred.

4. Further, Section 4-102 of the TIA provides that local public entities and their employees are not liable for failure to provide adequate police protection or service. 745 ILCS 10/4-102. Illinois and federal courts have interpreted this section as providing immunity to police officers assisting during a mental health crisis, just as Plaintiff alleges here. *See Payne v. City of Chicago*, 2014 IL App (1st) 123010; *Turner v. City of Champaign*, 979 F.3d 563 (7th Cir. 2020). Accordingly, Plaintiff's state law claims are additionally barred by immunity under the TIA.

5. The unnamed and unserved officers sued must be dismissed with prejudice. "Unknown officers" were sued in Plaintiff's original complaint and have not been served, nor has there been an attempt by Plaintiff or his counsel to ascertain the identity of the unknown officers. Failure to complete service within 90 days of filing the complaint subjects the action to dismissal. Fed. R. Civ. P. 4(m) and 41(b). Further, the statute of limitations has long since expired against the unknown officers, and the relation-back provisions of Rule 15(c)(1)(C) do not salvage the claim. *See Fed. R. Civ. P. 15(c)(1)(C); Herrera v. Cleveland*, 8 F.4th 493 (7th Cir. 2021).

5. Defendants have filed a supporting memorandum of law.

WHEREFORE, Defendants JEFFREY JOHNSON and CITY OF YORKVILLE pray that this Court grant their motion to dismiss with prejudice Counts III and IV of Plaintiff's First Amended Complaint and further dismiss the "unknown officers."

s/ Michael D. Bersani

MICHAEL D. BERSANI, Atty Bar No. 06200897

ANDREA M. NIKOLAI, Atty Bar No. 06318008

Attorney for Defendants City of Yorkville & Jeffrey Johnson

HERVAS, CONDON & BERSANI, P.C.

333 Pierce Road, Suite 195

Itasca, IL 60143-3156

P: 630-773-4774 F: 630-773-4851

mbersani@hcbattorneys.com

anikolai@hcbattorneys.com

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CERTIFICATE OF SERVICE

I hereby certify that on **October 14, 2022**, I electronically filed the foregoing ***Defendant City of Yorkville and Officer Jeffrey Johnson's Motion to Dismiss Counts III and IV of Plaintiff's First Amended Complaint and to Dismiss Unknown Officers*** with the Clerk of the District Court for the Northern District of Illinois, Eastern Division, using the CM/ECF system, which will send notification to the CM/ECF participants:

TO: Howard A. London
Matthew D. Elster
Beermann, Pritikin & Mirabelli
161 N. Clark Street, Suite 2600
Chicago, IL 60601-3243
halondon@beermannlaw.com
mdelster @beermannlaw.com

s/ Michael D. Bersani

MICHAEL D. BERSANI, Atty Bar No. 06200897
ANDREA M. NIKOLAI, Atty Bar No. 06318008
Attorney for Defendants City of Yorkville & Jeffrey Johnson
HERVAS, CONDON & BERSANI, P.C.
333 Pierce Road, Suite 195
Itasca, IL 60143-3156
P: 630-773-4774 F: 630-773-4851
mbersani@hcbattorneys.com
anikolai@hcbattorneys.com